REMARKS

Examiner Interview

Applicant thanks the Examiner for the telephone interview of March 27, 2006, and the follow-up telephone interview of March 30, 2006. During the interviews, Applicant's attorney and the Examiner discussed the rejection under 35 USC § 112, the rejection under 35 USC § 102 in view of Patel, and the rejection under 35 USC § 103 in view of Beale. With respect to the rejection under 35 USC § 112, the Examiner agreed to withdraw the rejection if Claims 10 and 16 are amended to specify the amount of pendant vinyl in the high vinyl silicone gum. With respect to the rejection in view of Patel, the Examiner agreed in the telephone interview of March 30, 2006, to withdraw Patel since it did not disclose each and every element of Claims 1 and 2. With respect to the rejection under Beale, Applicant's attorney discussed with the Examiner the fact that Beale does not teach or suggest the amounts of PTFE claimed by Applicant. The Examiner requested that Applicant submit, along with an RCE, an affidavit showing the unexpected results obtained by Applicant with regard to lower amounts of PTFE.

Claim Amendments

Claims 1-16 are pending in the application. Claims 10 and 16 have been amended to specify the amount of pendant vinyl present in high vinyl silicone gum.

Double Patenting Rejections

Because the double patenting rejections cited by the Office Action are provisional rejections, Applicant respectfully requests that the rejections be held in abeyance pending the consideration of the claims with respect to the following remarks. Should the present application be allowed prior to the issuance of any of the provisionally cited, and commonly owned applications, Applicant requests withdrawal of the provisional rejections.

Claim Rejections – 35 USC § 112

Claims 10 and 16 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated:

> Applicant's arguments have been fully considered but they are not persuasive. The focus argument related to the core patentability is discussed below. Note that the vinyl contents recited in the specification ([0081]) are merely preferred ones. They are certainly not the definition, per se, of the vinyl content. Furthermore, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In re Van Guens, 988 F.2d 1811, 26 USPQ 2d 1057 (Fed. Cir. 1993).

Applicant has amended Claims 10 and 16 to more clearly specify the amount of pendant vinyl present in high vinyl silicone gum. Applicant submits that the amended claims are not indefinite and requests withdrawal of the rejection under 35 USC § 112.

Claim Rejections – 35 USC § 102

Claims 1 and 2 were rejected under 35 U.S.C. 102(b) as being unpatentable over Patel (U.S. Patent No. 5,691,067). The Examiner stated:

> For Applicants' argument (Remarks, page 7, 1st paragraph), as mentioned in the previous Office action, Patel teaches cookwares and bakewares, such as fryer or hamburger or waffle makers (col. 2, lines 4-33) that certainly contain basins configured to receive a food substance. The coating of cookwares and bakewares is certainly a part of the cookwares and bakewares.

During the first telephone interview with the Examiner, Applicant's attorney discussed with the Examiner the fact that Patel does not disclose each and every element of the rejected claims. Upon re-review of the reference, the Examiner agreed in the telephone conference of March 30, 2006, to withdraw the Patel reference. Applicant respectfully requests withdrawal of the rejection of Claims 1 and 2 under 35 USC § 102.

Claim Rejections – 35 USC § 103

Claims 1-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Beale (U.S. Publication No. 2003/0047838), optionally in view of Hompanera (U.S. Patent No. 6,197,359) and optionally further in view of Togashi (U.S. Patent No. 5,232,959) and/or Wang (U.S. Patent No. 6,750,279) and/or Hergenrother (U.S. Patent No. 5,932,649). The Examiner stated:

> For Applicants' argument (Remarks, page 7, last paragraph to page 8, 1st paragraph), note that Beale Teaches, "Although an apparatus made from 100% PTFE is preferred, the major drawback of PTFE is its cost." ([0030]) (Emphasis added) Thus, Beale certainly does not teach away of using PTFE in a lesser amount because of the reason mentioned in the previous Office action.
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> For Applicants' arguments (Remarks, page 8, 2nd and 3rd paragraphs), Beale teaches the amount of the silicone rubber can be up to 70%, preferably, up to 65%. ([0029]) Beale further teaches that a filler can be used in an amount described in [0031]. Obviously, the rest can be PTFE.
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> For Applicants' argument (Remarks, page 8, 4th paragraph), the arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a *prima facie* case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

Applicant respectfully submits that Beale does not teach or suggest each of the elements of independent Claims 1 and 11. Beale teaches a non-stick apparatus that is formed from a blend of fluoropolymer and silicone rubber. The reference states that the blend preferably contains 40% by weight of the fluoropolymer component and 60% by weight of silicone rubber. The reference further states that the silicone rubber content should be below 70%. Based on these stated amounts, and the statement that an "apparatus made from 100% PTFE is preferred," the minimum amount of PTFE contemplated by Beale is 30% by weight (i.e. 70% silicone and 30% PTFE). The Examiner suggests that lower amounts of PTFE are taught due to the statement that a filler could be used. However, because the reference fails to address the effect that addition of

a filler has on the remaining components of the mixture, Beale is effectively silent on PTFE amounts below 30% by weight. The Examiner would attempt to show that the teaching of a filler necessarily reduces the amount of PTFE below 30%, while the value of silicone remains at or near 70%. However, the filler may instead be substituted for a particular amount of silicone, while allowing the PTFE to remain at or above 30%. In fact, this latter scenario would be more likely considering the teaching of Beale that higher amounts of PTFE are preferred. Regardless, Beale does not teach or suggest PTFE amounts below 30%.

The Examiner states that Beale "certainly does not teach away of using PTFE in a lesser amount." While Applicant maintains that the reference *does* teach away from amounts of PTFE lower than 30%, Applicant reminds the Examiner that the standard for establishing a *prima facie* case of obviousness is based on whether the reference *teaches or suggests* the elements of the claims, not whether the reference *fails to teach away from* the element of the claims. Applicant respectfully submits that the Beale reference does not teach or suggest each of the elements of independent Claims 1 and 11.

With respect to Claim 1, the claimed compound includes PTFE in a maximum amount of about 15 weight percent. With respect to Claim 11, the claimed compound includes PTFE in an amount of about 6 weight percent. These amounts of PTFE are significantly less than the minimum amount of PTFE taught or suggested by Beale. Applicant's use of lower amounts of PTFE than the values stated in Beale provides significant advantages. Applicant's testing of silicone rubber and PTFE formulations for bakeware has revealed substantial advantages and unexpected results to using PTFE amounts less than or equal to about 15 weight percent. These advantages and unexpected results are detailed in the Affidavit of Jeannie Holmes executed on April 24, 2006, and filed herewith. The *expected* results of adding higher amounts of PTFE

would be to improve certain characteristics associated with the coefficient of friction (see Affidavit of Jeannie Holmes, paragraph 7). However, higher amounts of PTFE resulted in less desirable characteristics. For example, substantially increasing the level of PTFE above about 15 weight percent results in poor release characteristics of items baked within the bakeware (see Affidavit of Jeannie Holmes, paragraph 8), poor mold release characteristics during manufacturing of the bakeware (see Affidavit of Jeannie Holmes, paragraph 9), and poor residue/cleaning characteristics (see Affidavit of Jeannie Holmes, paragraph 10). These unexpected results demonstrate that the amounts of PTFE present in Applicant's claimed compound are not an obvious variation of the higher amounts of PTFE taught by Beale.

Because Beale fails to teach or suggest amounts of PTFE lower than 30%, and in view of the unexpected results obtained by using significantly lower amounts of PTFE, Applicant respectfully requests withdrawal of the rejection of Claims 1 and 11 under 35 USC § 103. Since Claims 2-10 and 12-16 depend from allowable Claims 1 and 11, Applicant further requests withdrawal of the rejection of Claims 2-10 and 12-16 under 35 USC § 103.

CONCLUSION

Applicant respectfully submits that the pending Claims 1-16 are in condition for allowance and such a Notice is respectfully requested. The Examiner is invited to call the undersigned at the below-listed telephone number if, in the opinion of the Examiner, such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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